

1 Jason Levin (SBN 161807)
2 jlevin@steptoe.com
3 STEPTOE & JOHNSON LLP
4 633 West 5th Street, 7th Floor
5 Los Angeles, California 90071
6 T: (213)439-9400
7 F: (213)439-9599

8 Philip S. Khinda (*pro hac vice*)
9 pkhinda@steptoe.com
10 Thomas M. Barba (*pro hac vice*)
11 tbarba@steptoe.com
12 Patricia B. Palacios (*pro hac vice*)
13 ppalacios@steptoe.com
14 STEPTOE & JOHNSON LLP
15 1330 Connecticut Ave., NW
16 Washington, DC 20036
17 T: (202) 429-3000
18 F: (202) 429-3902

19 Attorneys for Defendants
20 Northern Dynasty Minerals Ltd.
21 Ronald W. Thiessen
22 Marchand Snyman

23 **UNITED STATES DISTRICT COURT**
24 **CENTRAL DISTRICT OF CALIFORNIA**

25 VICTOR DIAZ, Individually and on
26 Behalf of all others similarly situated,

27 Plaintiff,

28 vs.

NORTHERN DYNASTY MINERALS
LTD., RONALD W. THIESSEN, and
MARCHAND SNYMAN,

Defendants.

Case No.: 2:17-cv-01241-PSG-SS

DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS
PLAINTIFFS' SECOND AMENDED
CLASS ACTION COMPLAINT (DKT.
52)

Date: February 25, 2019

Time: 1:30 pm

Place: Courtroom 6A

Judge: Hon. Philip S. Gutierrez

DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS
PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on Monday, February 25, 2019, at 1:30 pm, or as soon thereafter as counsel may be heard, in the United States District Court for the Central District of California, Los Angeles Division, Courtroom 6A, located at 350 West First Street, Sixth Floor, Los Angeles, California 90012-4565, and before the Honorable Philip S. Gutierrez, Defendants Northern Dynasty Minerals Ltd. (“NDM”), Ronald W. Thiessen, and Marchand Snyman (collectively, “Defendants”) will move and hereby move this Court to dismiss Plaintiffs’ Second Amended Class Action Complaint, Dkt. 52, pursuant to Federal Rule of Civil Procedure 12(b)(6) and the Private Securities Litigation Reform Act of 1995.

This Motion is made upon the following grounds:

1. Plaintiffs’ first claim for relief, for alleged violations of Section 10(b) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, does not state a claim because:
 - a. Plaintiffs’ allegations as to scienter fail to meet the heightened pleading standards under Federal Rule of Civil Procedure 9(b) and the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4, because, despite this Court’s clear order dismissing Plaintiffs’ Corrected Amended Complaint, Dkt. 51 (April 30, 2018), (i) Plaintiffs continue to rely on confidential sources without providing any information to allow the Court to determine the sources’ personal knowledge and reliability, (ii) Plaintiffs’ purportedly new information regarding a draft cost estimate offers no specific factual allegations to support an inference that Defendants acted with the requisite intent, and

(iii) the information Plaintiffs contend Defendants hid from investors was in fact publicly available;

- b. Plaintiffs' allegations as to falsity fail to meet the heightened pleading standards under Federal Rule of Civil Procedure 9(b) and the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4, because (i) Plaintiffs continue to rely on confidential sources without providing any information to allow the Court to determine the sources' personal knowledge and reliability, and (ii) the statements Plaintiffs allege are false are classic examples of unactionable puffery; and
- c. Defendants' alleged misstatements fall under the Private Securities Litigation Reform Act's safe-harbor provision, 15 U.S.C. § 78u-5(c), because Defendants included clear and conspicuous language identifying the statements as forward-looking and cautioning investors about the specific assumptions and risks encompassed by the Second Amended Complaint.

2. Plaintiffs' second claim for relief, for alleged violations of Section 20(b) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78t, must be dismissed because Plaintiffs have not pleaded a viable primary federal securities law claim.

Defendants' Motion to Dismiss is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, Defendants' Request for Judicial Notice, the Declaration of Patricia B. Palacios, the pleadings and papers filed herein, any arguments presented at the time of hearing on this Motion, and such further matters as the Court deems just and proper.

This Motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on August 13, 2018.

1 Dated: August 24, 2018

2 STEPTOE & JOHNSON LLP

3 By: /s/ Philip S. Khinda

4 Philip S. Khinda (*pro hac vice*)

5 Thomas M. Barba (*pro hac vice*)

6 Patricia B. Palacios (*pro hac vice*)

7 1330 Connecticut Ave.,NW

8 Washington, DC 20036

9 Telephone: (202) 429-3000

Facsimile: (202) 429-3902

Email: pkhinda@steptoe.com

10 Jason Levin (CSBN 161807)

11 STEPTOE & JOHNSON LLP

12 633 West Fifth Street, Suite 700

13 Los Angeles, CA 90071

14 Telephone: (213) 439-9455

15 Facsimile: (213) 439-9599

Email: jlevin@steptoe.com

16 *Counsel for Defendants*